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1 those that we were able to analyze.

2 Q What about people who said that they were relying upon  
3 evidence other than an X-ray, did you exclude them from the  
4 analysis?

5 A No. Those were assumed to pass at the same rate that the  
6 people with X-rays passed.

7 Q What about people who said that they were relying on  
8 X-rays, but then neither supplied them nor provided the  
9 certification that they were lost or destroyed, what did you do  
10 with those folks?

11 A Those folks were excluded.

12 Q And on what grounds?

13 A That there was no X-ray evidence and so if the rule was  
14 that there was a reproducible X-ray required, there was no way  
15 to make that real.

16 Q Okay. I want to go back for a moment to the slide that  
17 you had 2318 and you said in a couple of different places, both  
18 with respect to other cancers and non-malignants that there was  
19 a screen done first of all to determine whether there was  
20 sufficient data to even analyze for laryngeal or analyze for  
21 non-malignant. Do you recall that?

22 A I do.

23 Q What about the people that had said they had the disease  
24 or fell into one of these categories, but where there was  
25 insufficient data on the basis of which to determine whether

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1 their claims met the criteria or not, how did you deal with  
2 them, the insufficient data people?

3 A So you're saying the people that -- of the work, for  
4 example using other cancer?

5 Q Yes.

6 A That group of 133 minus the 105.

7 Q That's correct. That is, the people who didn't have the  
8 sufficient data, how were they factored in, if at all?

9 A We said that the group that did not respond would, in  
10 essence, in one of our estimates would qualify at the same  
11 weight as those that did respond whether it was sufficient  
12 information.

13 Q Do you have a demonstrative in 2323 that illustrates the  
14 basic approach that was taken with respect to people who --  
15 where there was not sufficient data?

16 A Yes.

17 Q Could you just walk the Court through what was done to  
18 account for the people -- the two different methods that were  
19 used to account for the people who did not provide sufficient  
20 data?

21 A Well if you look under the data category you see that  
22 there is a group of people that did not provide sufficient  
23 information for which to evaluate the claim, on one or more of  
24 these criteria. And then there was a group where the  
25 information was there that was necessary to evaluate the claim.

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1 If you look at the bottom of that chart, there was a certain  
2 group of claimants that met the criteria and a certain group of  
3 claimants that did not meet the criteria. So for what we've  
4 called Method 1, we said well that's one measure of how many  
5 people would meet these criteria.

6 Q So, these are met or did not meet, and if you did not meet  
7 or if you didn't have sufficient data you just tell me how were  
8 they counted?

9 A So we would basically say that the group that met the  
10 criteria is the only group that would meet the criteria. So  
11 non-sufficient to evaluate plus it did not meet, would fall  
12 into the eliminate -- an eliminated category.

13 Q What about Method 2, what was done in Method 2?

14 A In Method we basically said we thought as an upper bound  
15 we should look at the possibility that the people that did not  
16 respond, what would happen if they looked like the people that  
17 did respond. In other words, those people that had sufficient  
18 information to evaluate, what if the people that did not  
19 provide information were able to qualify at the same rate?

20 Q So you take the ratio of qualified versus not qualified  
21 and now apply it to the insufficient data group?

22 A That's correct.

23 Q And then you have to then add the two together?

24 A We use both methods, correct.

25 Q Now as your analysis continued going forward did you carry

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1 that through the analysis; that is, including both cases the  
2 Method 1 approach and the Method 2 approach.

3 A We did. Wherever there was a criteria that was applied,  
4 where it was possible to do that, we estimated both the number  
5 of claimants that met the criteria clearly and then estimated  
6 the number of claimants that if they had, even though they  
7 provided insufficient information, if they had qualified at the  
8 same rate as those that provided information what number of  
9 claimants that would imply. So there was a Method 1 and 2 that  
10 we've used throughout the analysis.

11 Q Does 2324 reflect the application of that method to other  
12 cancer?

13 A It does.

14 Q And does 2325 do the same thing for non-malignant disease?  
15 Showing 2325.

16 A It does, yes.

17 Q Okay.

18 A For the medical -- these medical criteria, correct.

19 Q Showing you 2322, does this now reflect the total number  
20 of claims that emerge once you've got your knowns plus your  
21 allocation of unknowns and then apply the medical criteria  
22 according to the two different methods where it's appropriate,  
23 does 2322 summarize the total number of matched POC claims that  
24 pass the medical criteria tests?

25 A It does.

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1 Q And does this accurately reflect that?

2 A It does, yes.

3 MR. BERNICK: Let's go to the exposure criteria which  
4 will then take us to total currents and maybe that would be an  
5 appropriate time for a break, Your Honor. I don't know.

6 THE COURT: Give me a second please.

7 (Pause)

8 THE COURT: Okay, thank you.

9 Q Let's now talk about the exposure criteria. Do we have a  
10 similar slide that relates to the exposure? Well let's begin.  
11 To do the exposure analysis, were you able to work with the  
12 total number of claims in each disease category matched to  
13 POCs, or did you work with some other group?

14 A Well, since a claimant has to meet both the medical  
15 criteria and the exposure criteria, then we really had to look  
16 at for exposure purposes that subset of people that meet the  
17 criteria in order for it to be -- in order for it not to run  
18 into problems with estimating these probabilities.

19 Q 2326, tell us whether or not this reflects the groups of  
20 claims that were then evaluated for exposure, the exposure  
21 criteria?

22 A It does. It represents the groups that were evaluated.  
23 In fact I think if you notice it, these are the same numbers  
24 that appear on 2318.

25 Q The right-hand column?

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1 A The final column of 2318. Those are people that met those  
2 criteria.

3 Q Showing you 2327, does this chart reflect how the exposure  
4 categories were applied?

5 A It does.

6 Q Could you walk us through the different steps that were  
7 involved in applying the exposure categories from Dr.  
8 Anderson's work?

9 A If you notice each -- there are four segments to the chart  
10 for each disease type and you see "Group Reviewed" is the first  
11 column so for mesothelioma there were 1596 claims that met the  
12 medical criteria that were reviewed, and all of these were  
13 reviewed by Exponent.

14 Q Okay. Now it says sufficient data. Were there sufficient  
15 data to do an exposure review with respect to all 1596 mesos?

16 A No, there wasn't. So there's only a group of these and in  
17 the case of mesos there were only 534 claims where there was  
18 sufficient data to do an evaluation of whether the exposure  
19 criteria were met.

20 Q Do we see the same basic analysis done for lung cancer,  
21 other cancers and non-malignants?

22 A That's correct.

23 Q Now, you then say who actually did the exposure review;  
24 you've got Exponent and you've got the criteria. They had to  
25 be As or Cs and the Court has already heard more than enough

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1 about those. Again were these assumptions that you made; that  
2 is, you assumed the accuracy of the Exponent data and you  
3 assumed the application that they properly applied the exposure  
4 categories?

5 A We did, yes.

6 Q Okay. Now tell us what we see in the last two columns  
7 under "Claims that pass".

8 A Well if you look under -- the last two columns this  
9 concept that I described earlier of Method 1 and Method 2. So  
10 that is, what's the rate at which people qualify of those that  
11 provided -- of those that we could judge? And then also what's  
12 the rate at which people qualified for those that provided  
13 information? So what you see here is the number of people of  
14 the claims that can be evaluated, the 534 that had sufficient  
15 information, 102 were found to pass the criteria that is judged  
16 by Exponent, and that 102 is roughly 6.4 percent of the 1596  
17 claims that were evaluated.

18 In Method 2 remember we said that, when we  
19 calculating a rate those claims, that only those claims had  
20 sufficient information and apply that rate to all the claims.  
21 And so in Method 2 what you see there is, it is the 102 claims  
22 that met the criteria divided by 534 claims; that is, the  
23 number of meso claims that had sufficient information. That  
24 gives you a rate of 19.1 percent for Method 2.

25 Q Does 2327 accurately summarize the data and the pass rates

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1 that emerged from the exposure review?

2 A It does, yes.

3 Q Now we are -- you've pointed out that this review is done  
4 only of certain groups. How did you get from this analysis  
5 back to all of the people who passed the medical review -- all  
6 the people that passed the medical review as opposed to the  
7 people in the sample who passed the medical review? How did  
8 you translate the results to the groups as a whole?

9 A We used the rates that you see there in parenthesis for  
10 Method 1 and Method 2, and applied those to the full group.

11 Q So showing you 2328, does this now reflect the application  
12 of those rates in order to calculate the numbers of people  
13 within each group who qualified under both the medical and the  
14 exposure criteria?

15 A That's correct. So, those are the rates multiplied by the  
16 number of people in each of those groups.

17 Q And you'd use again both methods?

18 A We used both methods, correct.

19 Q Then what is the -- what is in the column that is  
20 reflected as overall median, what are those numbers?

21 A That just provides the median value between the two  
22 methods, between Method 1 and Method 2.

23 Q Does this now bring us in your analysis to the numbers of  
24 claims, matched claims, pending as of the time that Grace filed  
25 for Chapter 11 that meet both the exposure and the medical

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1 criteria?

2 A It does, yes.

3 Q And turning now to 2301 --

4 MR. BERNICK: Ray, this is -- you like these moments.

5 Q Do we then have the information that appears as the  
6 pending claims?

7 MR. BERNICK: We may have a mistake here That's both  
8 criteria? Oh, yeah, well, that's right. But, I didn't show  
9 that. I've got the one that's on the board -- 310 -- no,  
10 that's right. 310, 367 for the lung cancers. No, that's not  
11 right. Is that just exposure?

12 UNIDENTIFIED ATTORNEY: Yes, exposure.

13 MR. BERNICK: No, this is just exposure. Then this  
14 one then has to be a mistake. I've got the board that's just  
15 got the pendings. Give us a moment.

16 THE WITNESS: Would this be a good time to take a  
17 break, Your Honor? I could use it.

18 THE COURT: Yes. All right. We'll take a ten minute  
19 recess.

20 (Recess)

21 THE COURT: All right. Could you put that back up,  
22 please? Mr. Bernick?

23 MR. BERNICK: Yes, thank you, Your Honor.

24 BY MR. BERNICK:

25 Q Dr. Florence, I want to take you back to an error that was

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1 my own. We summarized 2328 and I was -- I misled myself by  
2 looking at the 310 number for meso and described in my question  
3 to you that this chart summarized the results of both criteria.  
4 And I see now that it only describes the results of the  
5 application of the exposure criteria, is that correct?

6 A That's correct.

7 Q Let's now get to the chart that I then skipped over in my  
8 haste to reveal from the board. Let's go to 2329 and my  
9 question to you is whether this now shows us the summary --  
10 accurately summarizes the number of pending claims in each of  
11 the disease categories meeting all of the criteria including a  
12 reflection of the use of the Method 1 and Method 2?

13 A It does. It summarizes the results of applying those  
14 rates to the group of individuals that filed proofs of claim.

15 Q Now if we take the two numbers for each of the disease  
16 categories as reflected in 2329 and we calculate a median, does  
17 that then get us to the column under pending claims for Exhibit  
18 2301?

19 A It does. Yes.

20 Q Let's then take the next step and talk about the valuation  
21 of these claims. When it comes to determining the valuation of  
22 the claims that meet both criteria, where did you go in order  
23 to obtain information relating to value?

24 A We went back to the closed claim data base and the sample  
25 we selected from that data base.

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1 Q Okay. Let's talk about -- well let me just ask you a  
2 general question. When you went back to the closed claims data  
3 base and you looked at the closed claims data base, what  
4 comparison, if any, did you make with the claims in the closed  
5 claim data base and the claims that had been sorted out through  
6 the application of the criteria --

7 MR. INSELBUCH: Objection Your Honor. This is where  
8 we would enter our protective objection and ask for a continued  
9 objection to anything that he has to say about this data base  
10 and the settlements in that data base.

11 THE COURT: All right. The objection is noted and as  
12 I indicated overruled so that we can get through this. But I  
13 will make official rulings after I get to the end of all of the  
14 evidence in the entire case.

15 MR. INSELBUCH: Thank you, Your Honor.

16 MR. MULLADY: I want to join the objection.

17 THE COURT: All right. One second please. Okay, now  
18 the objection is made, but I need the question restated. I  
19 only got half of it.

20 MR. BERNICK: It wasn't a great question anyhow, but  
21 we'll put it again.

22 Q You now want to get values, you said you go to closed  
23 claims. Could you just go to any closed claims or was there  
24 some other process that was involved in looking to particular  
25 closed claims?

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1 A We wanted to go to closed claims that met the criteria.  
2 So those would be claims that had been previously settled or  
3 closed by Grace that met the criteria we're looking at.

4 Q Showing you 2330, does this reflect the -- with respect to  
5 the settled meso claims, the results of reviewing those meso  
6 claims both for the exposure and the medical or diagnostic  
7 criteria?

8 A It does.

9 Q So you say of this 285 settled meso claims, six met the  
10 criteria, 21 did not meet and with respect to 258 there was  
11 insufficient information?

12 A Yes. This is related to mesothelioma.

13 Q Right.

14 A And as you recall the only criteria dealing with  
15 mesothelioma was whether the mesothelioma claimant met the  
16 exposure criteria. So these claims, these settled claims were  
17 reviewed by Exponent, as I understand, using the same  
18 methodology to determine whether in fact they had sufficient  
19 information to be judged to meet the exposure criteria on  
20 whether they had insufficient information. And so, this  
21 categorization is really the categorization by Exponent of  
22 those closed claims.

23 Q Fine. Now, you have different averages for the six that  
24 met 155,000, for the 21 that did not meet about 127,000 and for  
25 the 92 or -- the 258 where the information was not sufficient,

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1 \$92,649 average per claim, where did those numbers come from?

2 A That comes directly out of the claims data base provided  
3 by Grace. These represents the -- represents the positive  
4 amounts paid by Grace in those cases.

5 Q Okay. What observations, if any, did you have with regard  
6 to these numbers; that is, the 92,000, the 127 and the 155?

7 A Well, yeah, this was a difficult analysis I think because  
8 one dollar value that is not illustrated here is the average  
9 for that entire group of settled claims which I think was about  
10 \$96,000.

11 Q Okay.

12 A When we looked at this, the first thing we did was looking  
13 at the six cases that met, there was a feeling that that was a  
14 relatively small number of cases, but we wanted to see if in  
15 fact that value was somehow statistically different from either  
16 the overall average or these other averages. So that 155,000  
17 we tested using statistical tests to determine whether  
18 statistically it was different than the 127,000, the 92,000 and  
19 the 96,000 that I mentioned.

20 Q And what did you determine?

21 A That it was not statistically different. So in other  
22 words you would expect this kind of variation totally due to  
23 sampling error, and the error in the process. So one of the  
24 approaches we entertained was to value these cases at the  
25 overall average, the \$96,000.

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1 Q Okay. Why did you -- let me just before I -- I'm going to  
2 ask you why you didn't, but let me just ask you another  
3 question. Did you make any observations as to whether varying  
4 evidence of exposure made a difference to claims value; that  
5 is, better evidence of exposure, the higher values, lower or  
6 poorer evidence of exposure to Grace product led to lower  
7 values?

8 MR. FINCH: Objection, lack of foundation as to --  
9 and to form as to better or less evidence of exposure.

10 MR. BERNICK: I'll rephrase it.

11 Q First of all, was there evidence regarding exposure that  
12 was presented to you as a result of this process; that is, with  
13 respect to these claims?

14 A Yes. We had the determination by Exponent of which of  
15 these 285 claims met the exposure requirement and which didn't  
16 and which had sufficient information to even judge the exposure  
17 requirement.

18 Q What conclusion did you reach as to whether proof of  
19 exposure to Grace product made a difference or did not make a  
20 difference with respect to claim value for mesothelioma claims?

21 MR. FINCH: Objection as to form. By proof of  
22 exposure to Grace product, is he talking about mixing,  
23 installing, or any proof at all of exposure to Grace product?

24 MR. BERNICK: Your Honor, with all due respect I just  
25 created a foundation. The foundation was the Exponent review.

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1 The Exponent review has now been put into the record by two  
2 different witnesses and it was on the basis of the Exponent  
3 review that I asked him the question.

4 THE COURT: Well if we're basing it on Categories A  
5 and C since that seemed to be what he testified about earlier,  
6 is that the case?

7 MR. BERNICK: Yes, well that is what he testified.

8 THE COURT: Fine. Overruled.

9 A I'm sorry. Could I hear the question again?

10 Q Yes, the question is now -- we'll try it again. Could you  
11 tell us what, if any, observations you have made as to the  
12 impact of proof of exposure to Grace product as that proof was  
13 presented to you through Exponent, what difference, if any, it  
14 made to settlement value?

15 A Well this slide itself shows one conclusion which was that  
16 where the information was unfortunately non-existent, the  
17 claims average that was 258 claims they averaged \$92,000.  
18 Where the claims information was available but did not meet the  
19 AC criteria, the average was \$127,000. And in those six claims  
20 where the information was available and they did meet the AC  
21 criteria, the average was 155,000. So one conclusion was that  
22 there was -- there did seem to be some trend, but when we  
23 tested the statistical significance of that trend we basically  
24 said -- we were able to determine that there really was no  
25 statistically significant basis for distinguishing between

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1 92,000 and 155,000.

2 Q Okay. I see from the slide that ultimately the 155 was  
3 selected then for use?

4 A It was.

5 Q Okay. How then did you get to the valuations for the  
6 other categories, the other disease categories as lung cancer,  
7 other cancers, non-malignant disease?

8 A Well, we didn't have the same type of data on lung  
9 cancers, other cancers and non-malignant disease on the closed  
10 population as we did on the meso group. So we had to derive  
11 some additional method of trying to value that group of claims.

12 Q And what was that method?

13 A What we did was we looked at the TDPs, trust distribution  
14 procedures, that have been promulgated in bankruptcies over the  
15 last, I guess it was probably two years and we looked at the  
16 relationship of those values to mesothelioma value. For  
17 example, if looking across all these TDPs there is a pattern  
18 that would indicate lung cancers tend to be valued at a lesser  
19 percentage than mesos and that percentage tends to be -- I  
20 don't remember the exact number, but let's say 62 percent. And  
21 other cancers in those TDPs tend to be valued at some  
22 percentage of meso and let's say that number tends to be 32  
23 percent.

24 So we use that pattern that existed in the trust  
25 distribution procedures of other bankrupts to set the values

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1 for the claims other than mesothelioma. So using the 155,000  
2 as the average for mesothelioma we said the other values would  
3 follow this pattern, the pattern that we saw in the other TDPs.

4 Q Is what you've just said now accurately summarized in  
5 Exhibit 2331?

6 A It is.

7 Q Okay. If we then want to take that out to the ultimate  
8 valuation of all of the pending claims, I'm assuming that  
9 that's a question of multiplication?

10 A It's purely arithmetic at that point, yes.

11 Q Okay. Showing you the other -- the last -- the next two  
12 columns on 2301; that is, claim value, are the numbers that  
13 appear here the same values per claim that you've just  
14 described in Exhibit 2331?

15 A They are. The non-malignant claims are in a little  
16 different order, but the same value, same numbers.

17 Q Okay. And if we then express the pending claims times  
18 claim value, do we get then the total pending claim values for  
19 meso, lung cancer, other cancers and non-malignant that are  
20 reflected in the total pending values expressed in millions, so  
21 the total would be 81 million for total pending?

22 A That's correct. With remembering that that pending claim  
23 column is the median value between Method 1 and Method 2.

24 Q Okay. Now peeling one more thing off the top, are we now  
25 going to want to go talk about future claims, is that the next

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1 step in the process?

2 A It is.

3 Q Okay. Was the first step of being able to project future  
4 claims against Grace -- what was the first step involved in  
5 that process?

6 A It was to characterize the historical population of claims  
7 against Grace whether they be pending or resolved as claims  
8 that would or would not meet these criteria.

9 Q Okay. So let's begin with mesos. What population of  
10 mesos did you work with in creating your baseline for the  
11 future projection, showing you 2333?

12 A Well, we started with the pending cases which we've  
13 already talked about.

14 Q That's the 310?

15 A That's the 310, correct.

16 Q We see that right on the board there?

17 A Right.

18 Q Okay. Then what was the next component?

19 A We went back to the resolved claims and said if those  
20 claims had met the criteria at the same rate that the claims  
21 that were pending met the criteria, then there would be 688  
22 resolved claims that would meet the criteria.

23 Q Now, you have 998 total meet criteria from 1980 to 2000,  
24 what does that represent?

25 A That's just the sum of the pending claims and the resolved

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1 claims. So, it gives you the full historical data base in  
2 terms of mesos that would meet the criteria.

3 Q Now earlier in the day you talked about the necessity of  
4 creating an input to your futures model. How -- can you tell  
5 us how it is that on the basis of defining this population of  
6 meso claimants you were able to create an input to the model?

7 A Well, that tells us for historical claims and for year  
8 periods within that historical period for each year how many  
9 claims were filed in that year that would have met the criteria  
10 that were specified to us.

11 Q So what then is the -- now knowing the total number of  
12 claims by year that met the criteria, what's the next step in  
13 creating your calculation of futures?

14 A We look back to -- first we go to the most recent history  
15 under the belief, and I think the belief that is shared by most  
16 forecasters, that most recent history is probably the best  
17 indicant of what is going to happen in the future. We go to  
18 that most recent historical period and we look at how many  
19 claims were filed there that met that criteria. And in that  
20 period we look at we normally call a calibration period, that's  
21 the period of interest to us.

22 Q Showing you 2334, does this illustrate the calibration  
23 period that you use which is 1996 to 2000?

24 A Right. We actually used a number of calibration periods  
25 that ranged from '96 to 2000. So we actually used a five-year

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1 calibration period. One was a five-year calibration period  
2 that ranged from '96 to 2000; '96, '97, '98 '99, 2000 all the  
3 way down to 1999 and 2000. So there's groups of years that  
4 we're looking at. And the idea here is you don't -- it's  
5 possible in doing an analysis like this, that one year or  
6 another year might be anomalous in some way. So by combining  
7 years you hope to minimize the effect of any anomaly.

8 Q Showing you 2235, does this reflect the varying  
9 calibrations that you did and the varying calibration periods  
10 that you used in connection with the process of building your  
11 model for future meso claims?

12 A Right. And when I say building my model we actually are  
13 building multiple models here. We're building a model for each  
14 calibration period. So we're saying what if the future looked  
15 like the period '96 through 2000? What if the future looked  
16 like the period '97 to 2000, '98 to 2000, '99 to 2000?

17 Q Okay. In order to go forward from these calibrations to  
18 the future, how do you fill in the mesothelioma trend based  
19 upon these varying calibrations?

20 A Well, the trend is reasonably captured in the calibration  
21 periods. So, in other words, by picking alternative  
22 calibration periods if there is a trend it will be captured.

23 Q My mistake. How do you extend that trend out into the  
24 future in years beyond 2000 using your model?

25 A I think that's when we really look to the epidemiological

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1 models that I think were referred to earlier, and those are  
2 generally models by either -- that were either developed by  
3 Nicholson or a model developed by Peto. So we really look at  
4 two different models.

5 Q Okay. I'm showing you 2337, does this describe in just  
6 general terms the two different models?

7 A Yes, it describes the -- it certainly describes the  
8 Nicholson KP&G model. I'm sorry. I'm on the wrong slide.

9 Q I switched them on you.

10 A Yes, it talks about -- there's really two models;  
11 Nicholson and Peto.

12 Q Okay. Now, if we go back to the calibration periods I  
13 think that you've said that you run more than one model and  
14 more than one calibration period.

15 A We do.

16 Q Showing you 2336, does this illustrate just what we talked  
17 about; that is using different calibration periods and then  
18 running different models for each of the calibration periods in  
19 order to project out the Grace specific mesothelioma future  
20 trend?

21 A That's correct. What you are really looking at, and this  
22 is -- this curve at the top is the, what we call the Nicholson  
23 KP&G curve, it's the curve that was originally developed by Dr.  
24 Nicholson as enhanced by work from KP&G. For a given  
25 calibration period, you are looking at what's the ratio of

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1 qualified claims in that calibration period to the number of  
2 claims that Dr. Nicholson and KP&G estimated would be filed  
3 during that period due to occupational exposure to any  
4 asbestos.

5 Q Okay. And so now what are you doing with respect to  
6 Grace?

7 A I'm sorry?

8 Q You said that that is occupational exposure as a whole,  
9 what are we doing with respect to the Grace projections?

10 A Well, for each calibration period we're looking at what  
11 proportion of the total forecasted occupational exposures were  
12 exposures that resulted from claims filed against Grace that  
13 met these criteria. And so that ratio then uses the curve as  
14 you see it going past 2000 and it assumes that same ratio going  
15 forward. So, it provides us with an estimate of if these  
16 claims track this epidemiological curve and there were the same  
17 proportions we've historically determined in the calibration  
18 period met the criteria, this is what the forecast would look  
19 like.

20 Q Now, you said you assumed that ratio remains constant. Is  
21 that an assumption or is that something that you verified that  
22 is for the next 30 or 40 years is going to remain the same?

23 A That's really an assumption.

24 Q Okay. Based upon those analyses, does 2338 list the  
25 different calibration periods, the different estimation methods

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1 and the different net present values for future mesothelioma  
2 claims for Grace?

3 A It does. So if you look down the left-hand column you see  
4 the forecasting method is either Nicholson or Peto. The  
5 calibration period you notice the differences there from '96 to  
6 2000, '97 to 2000. And then for each of these -- so we have a  
7 different forecast for each calibration period and each method  
8 and that provides us, for mesothelioma, with eight forecasts.  
9 Right?

10 Q Okay.

11 A Then you'll notice that that forecast is done on the  
12 Method 1 data. So in other words assuming that the people that  
13 responded to the information and qualified are the only people  
14 that would qualify and then using Method 2 data, it's under the  
15 assumption that people that didn't respond and didn't provide  
16 sufficient data would qualify at the same rate as the people  
17 that responded and had sufficient information. So this shows  
18 you the variation, at least for mesothelioma, of all of those  
19 forecasts.

20 Q Okay. If we then want to sum up; that is, both pendings  
21 and futures on an NPV basis, I want to show you 2340 and ask  
22 you whether this is an accurate summary of the NPV values for  
23 pendings, futures and then pendings and futures for each of the  
24 different categories using each of the Method 1, Method 2 and  
25 then stated as median values and millions of dollars.

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1 A This is really a table of the kind of medians of medians.  
2 That line there on Method 1, just to make it clear, we're  
3 pricing the present and future claims as if they were qualified  
4 under the assumptions of Method 1. The pending claims are  
5 worth, I think we valued earlier the present value at \$24  
6 million.

7 The futures is actually multiple forecasts because we  
8 were looking at Method 1 using these alternative methods,  
9 right, and alternative calibration periods. So that 128 is  
10 really a median of multiple forecasts. So when you add those  
11 together it gives you 152 million, and then the bottom line  
12 there is a median of medians. It's just a midpoint of all  
13 those midpoints.

14 Q Does this now give us the last two columns of 2301 which  
15 are the valuations for futures on a median basis and then the  
16 valuations for pendings and futures NPV on a median basis  
17 resulting in a total of \$468 million NPV?

18 A NPV on a median basis, correct.

19 Q Okay. Dr. Florence, after -- I take it that a tremendous  
20 amount of work has gone into this process and we've seen that,  
21 I mean, is that true?

22 A Yes, I would agree with that.

23 Q Okay. And we see that different techniques have been used  
24 depending upon the availability of the data?

25 A Yes.

1 Q Based upon the assumptions that you've made in this  
2 process and based upon the methods that you have deployed, are  
3 you aware of any other more reliable way to estimate Grace's  
4 current and future asbestos liability than the one that you  
5 have chosen to present here?

6 A Assuming that liability is based on these criteria.

7 Q Yes.

8 A I have no better -- this is the best way I could come up  
9 with, yes. I know of no better way.

10 MR. BERNICK: Your Honor, we will offer in certain of  
11 the demonstratives as summaries. I will provide a list of  
12 those to counsel before the lunch break. I am assuming that we  
13 will probably take a lunch break now, is that appropriate?

14 THE COURT: Yes, that's fine.

15 MR. BERNICK: And then we'll make the formal proffer  
16 after we come back from lunch and then I'll pass the witness to  
17 opposing counsel.

18 THE COURT: All right. We'll be in recess until  
19 1:05.

20 MR. BERNICK: Thank you.

21 (Lunch recess)

22 THE COURT: Please be seated. Dr. Florence, just a  
23 reminder that you are still under oath. And, Mr. Bernick, you  
24 were going to offer some exhibits.

25 MR. BERNICK: Thank you, your Honor. TJ, if you

1 could show 233. We're offering in as summaries the following.  
2 This list has been provided to counsel for the ACC and the FCR  
3 2316 through 18, 2321, 22, 24, 25, 27 through 29, 31, 36, 38  
4 and 40, along with 2301. If Your Honor would like me to go  
5 back over those, I can.

6 THE COURT: I have them.

7 MR. BERNICK: Okay. I understand from Mr. Finch that  
8 he has a concern with the slope of 2336, that is the Nicholson  
9 KPMG curve. It appears to come down rather precipitously. And  
10 I am told, and will represent to the Court, that that is an  
11 accurate slope given the scale from 2000 going forward. It's  
12 all very compressed but it is different, the scale is different  
13 than before 2000. There was more space before 2000. So when  
14 you see it kind of going over the edge like a roller coaster,  
15 that is simply a function of the different scale on the  
16 horizontal axis before and after 2000, but it is otherwise  
17 accurate after 2000.

18 MR. FINCH: My objection, Your Honor, is that as  
19 depicted one would draw the conclusion that the scale to the  
20 right of the year 2000 is the same as the scale to the left of  
21 the year 2000 in terms of years and that is absolutely not the  
22 case, which leads to a projection of the Nicholson incidents  
23 curve that appears to drop off rapidly after the year 2000 when  
24 in fact it is a very, very gradual decline.

25 THE COURT: Well isn't that curve in several of his

1 reports that are in exhibits both in the debtor's and the ACC's  
2 and the FCR's exhibits?

3 MR. FINCH: Not in Dr. Florence's -- that curve  
4 doesn't appear in any of Dr. Florence's reports, Your Honor.  
5 It occurs in Dr. Nicholson's -- excuse me, in Dr. Peterson's  
6 report. My objection is just solely to the scale on the right  
7 side of the line. If it's clear from the record that the scale  
8 on the right side of the line is much more compressed than the  
9 scale of years on the left side of the line, then I don't have  
10 an objection to the exhibit.

11 THE COURT: Okay. All I want to make sure, I thought  
12 that in Dr. Nicholson's reports themselves that his own curves  
13 were reported and that his reports are in evidence before me  
14 somewhere. I thought his 1982, '86 reports were --

15 MR. BERNICK: In fairness to Mr. Finch, the Nicholson  
16 KPMG curve is an adjustment or a modification of the Nicholson  
17 curve, so that is Nicholson KPMG.

18 THE COURT: I see, okay.

19 MR. BERNICK: So we would be happy if Mr. Finch wants  
20 to provide for the Court in evidence the KPMG curve itself, you  
21 know, on a broader scale, but --

22 MR. FINCH: We will put that into evidence with Dr.  
23 Peterson's testimony, Your Honor.

24 THE COURT: All right. I will -- I understand that  
25 the scale to the right of the 2000 year axis is not the same

1 scale as to the left of that axis. I've made a note and that  
2 this -- that the curve is in that sense a steeper curve than  
3 would otherwise be the situation and that you will put a  
4 representation of the curve itself as another exhibit. Let me  
5 just make a note.

6 MR. BERNICK: Okay. And I believe that that then  
7 takes care of the sole objection to the exhibits, the summaries  
8 that I've listed, and we would offer those into evidence as  
9 summaries.

10 MR. FINCH: No objection to the rest of them, Your  
11 Honor.

12 THE COURT: All right, so Exhibit -- so I'm admitting  
13 Exhibit 2336 with that explanation and --

14 MR. MULLADY: For the record, Your Honor, no  
15 objection by the FCR joining the comments of the ACC's counsel  
16 with respect to 2236.

17 THE COURT: 2336.

18 MR. MULLADY: 2336, excuse me.

19 THE COURT: Okay, thank you, same ruling. All right  
20 and exhibits 2316, 17, 18, 21 and 22, 24, 25, 27, 28, 29, 31,  
21 36, 38, 40 and 2301 are all admitted.

22 MR. BERNICK: Thank you, Your Honor. And with that,  
23 we would pass the witness.

24 THE COURT: All right. Give me one second, Mr.  
25 Finch.

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1 (Pause)

2 THE COURT: Okay, thank you.

3 MR. FINCH: Ready to proceed. Nathan Finch for the  
4 Asbestos Claimants Committee.

5 CROSS EXAMINATION

6 BY MR. FINCH:

7 Q Good afternoon, Dr. Florence.

8 A Good afternoon.

9 Q Dr. Florence, just --

10 MR. FINCH: Could you put the ELMO back on please? Q  
11 Since what lawyers say is not evidence, you would agree  
12 with me, would you not, sir, that the timescale to the right of  
13 the year 2000 is much more compressed than the timescale to the  
14 left of the year 2000?

15 A I would agree, yes.

16 THE COURT: Just for the record, you are talking  
17 about Exhibit GG-2336.

18 MR. FINCH: Yes, GG-2236 -- 2336.

19 Q Correct?

20 A I would agree, yes.

21 Q Do you still have your notebook of the two reports that I  
22 handed to you when I was voir diring you?

23 A I do.

24 Q Could you open that notebook to your second report?

25 MR. FINCH: What's the ACC exhibit number?

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1 THE COURT: 462.

2 Q 462. 462, Page 2, do you have those?

3 A I do.

4 MR. FINCH: Can we switch? Excuse me, could we  
5 switch off the ELMO to the -- John?

6 Q Okay. You were asked to assume that the only claimants  
7 whose claim -- the only claimants whose claims met the  
8 following criteria would be able to sustain their burden of  
9 proof that their claims against Grace are valid and therefore  
10 that their claims should be valued as a part of the estimation  
11 process, is that correct?

12 A That's correct.

13 Q And focusing on the nature of the minimum exposure  
14 criteria and focusing on mesothelioma claims, you assumed that  
15 the only valid mesothelioma claims that you gave value to were  
16 from workers who personally mixed Grace asbestos containing  
17 products and workers who personally installed Grace asbestos  
18 containing products, correct?

19 A That's correct.

20 Q And on the questionnaires the mixer is Category A and the  
21 installer is Category C?

22 A I believe that is correct, yes.

23 Q You didn't make any assessment of the validity of that  
24 assumption, did you sir?

25 A I did not, no.

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1 Q You made no independent judgment as to whether any of  
2 these assumptions as to what claims would be compensable or  
3 valid assumptions or invalid assumptions, correct?

4 A Correct. The assumptions were provided to me.

5 Q You didn't have any input to them?

6 A Correct.

7 Q You weren't consulted about them?

8 A Correct.

9 Q You don't have any opinion one way or the other as to  
10 whether these criteria are valid assumptions for a Court to  
11 adopt in estimating Grace's asbestos liability?

12 A Correct.

13 Q You don't have any opinion as to whether these criteria  
14 could successfully have been applied by Grace if it had not  
15 gone into bankruptcy?

16 A I have no opinion.

17 Q And you don't have any opinion about whether people who do  
18 not meet these criteria could successfully prosecute a claim to  
19 judgment in the tort system, do you?

20 THE COURT: I'm sorry, Mr. Finch, would you repeat  
21 that please?

22 Q Yes. You don't have any opinion about whether people who  
23 do not meet the criteria you were asked to assume could  
24 successfully prosecute a claim to judgment in their favor  
25 against Grace in the tort system?

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1 A I have no opinion, correct.

2 Q Okay. With respect to the mesothelioma criteria of  
3 personally mixed and personally installed, that was one of the  
4 criteria you were asked to assume, correct?

5 A It was, yes.

6 Q As part of your work in this case you reviewed some  
7 deposition transcripts of Grace's in-house lawyers, correct?

8 A I read them some time ago, quite long ago.

9 Q Okay. You would agree with me that historically Grace  
10 paid mesothelioma claims that did not meet the mix or install  
11 criteria?

12 MR. BERNICK: Objection to -- objection to the  
13 question on grounds of lack of foundation, number one, and to  
14 the extent that this is based upon the testimony of Grace  
15 employees. I further object that it violates the stipulation.  
16 They are not reliance materials and he's offered no opinion.

17 THE COURT: I can't hear you, Mr. Bernick. I'm  
18 sorry.

19 MR. BERNICK: I object on grounds of lack of  
20 foundation, and further object to the extent that he is being  
21 asked about the deposition testimony of Grace employees that  
22 goes beyond the scope of his direct examination. He's offered  
23 no opinion regarding that. And it also violates the terms of  
24 the stipulation which say that unless something is actually  
25 relied upon in connection with the opinion that's offered it's

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1 not subject to discovery merely because it was reviewed.

2 Q Dr. Florence, can you turn to your second report, Pages  
3 1-1 and 1-2 at the very back?

4 A I-1?

5 MR. BERNICK: I-1?

6 Q I-1. It's about the fourth page from the end of the  
7 document.

8 A Yes.

9 Q This says --

10 MR. FINCH: Keep going, John. It's Exhibit 1.

11 THE COURT: Appendix 1?

12 MR. FINCH: It's Exhibit 1. It's after Appendix J,  
13 Appendix K, Appendix L and then it becomes -- there's an  
14 Exhibit 1 and there's an Exhibit 2.

15 THE COURT: You are talking Page 2-1 not I-1?

16 MR. FINCH: I'm talking Page 1-1, Exhibit 1-1.

17 A It's an exhibit, not an appendix.

18 Q It's an exhibit. Do you have the exhibit in front of you,  
19 Dr. Florence?

20 A I do.

21 Q And at the top it says Exhibit 1, Documents Relied Upon?

22 A Yes.

23 Q And listed in the documents relied upon, Number 10 is the  
24 testimony of Robert Beber taken February 21, 2007. Number 11  
25 is the testimony of Jay Hughes taken February 22, 2007. Number

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1 20 is the testimony of Robert Beber taken July 30th, 2002.

2 Number 21 is the testimony of David Siegel taken September 19,  
3 2002?

4 A Yes.

5 Q And Number 18 is the testimony of Jay Hughes taken July  
6 19th, 2002?

7 A Yes.

8 Q And you have done work in estimating asbestos claims and  
9 the costs of those claims for the W.R. Grace company for more  
10 than ten years, correct?

11 MR. BERNICK: At this point, Your Honor, first of all  
12 the work that he did for Grace in connection with their reserve  
13 estimate has not been before the Court in connection with this  
14 witness' testimony. Secondly, while it is true that these  
15 documents were listed as reliance materials he was specifically  
16 asked about this in his deposition and clarified that he simply  
17 was asked to read them and doesn't really know why and that  
18 they were not used. So, they are not reliance materials.

19 MR. FINCH: Your Honor, Dr. Florence testified that  
20 he -- on my voir dire that he was relying on all of his past  
21 experience in estimating asbestos liabilities for here. Mr.  
22 Bernick asked him specifically about estimates for defendants  
23 done in the tort system and included on that list is W.R.  
24 Grace.

25 I would submit to you that the reliability of an

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1 expert's work and the credibility of an expert's work is always  
2 within the scope of direct examination. Mr. Bernick asked him  
3 about the work he did for Grace on direct exam and I think I am  
4 perfectly entitled to cross examine Dr. Florence about his  
5 prior work in the Grace case and in other cases.

6 The expert stipulation doesn't bar this. The  
7 stipulation Mr. Bernick has referred to has nothing to do with  
8 this. And, in fact, during a hearing on May 2nd, 2007 I  
9 specifically raised this issue with the Court. I made very  
10 clear that I never agreed that I couldn't use Grace's past work  
11 that Florence did to impeach him or to impeach the company.  
12 That is critical to the ACC's ability to impeach him at trial.  
13 I never agreed to that and later in the transcript Mr. Bernick  
14 says, "We're not taking the position you can't impeach Dr.  
15 Florence with prior testimony, prior contrary testimony as Dr.  
16 Peterson was impeached in the Babcock & Wilcox case based upon  
17 his prior sworn testimony in that case."

18 And later on in the same transcript I say, "I can  
19 impeach the company. The company is the one who is presenting  
20 an estimate of liability. I am certainly entitled to show how  
21 they did it in the past." And the Court responded, "Sure, you  
22 can show how they did it in the past, but that is, as I  
23 understand it, was the scope of the depositions in the past."

24 So I think his methodology that he used in the past  
25 for Grace is certainly relevant to the estimate that you are

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1 being asked to accept here. It's no different than in a real  
2 estate valuation case. If a real estate expert, an appraiser,  
3 had a long history of valuing Black Acre by comparables in the  
4 same neighborhood and then he comes into Court and says this  
5 time I'm basing the value of Black Acre on astrology. You  
6 could certainly go back and impeach him with his prior work.  
7 And it's not covered by the expert stipulation.

8 MR. BERNICK: Your Honor, (a) there is no impeachment  
9 at least as of this point in time, there is no impeachment  
10 whatsoever, (b) it is -- we had a stipulation, the stipulation  
11 governed this particular situation. There are all kinds of  
12 materials I could have used to impeach Dr. Peterson and their  
13 other experts, but because they didn't rely upon them, I'm not  
14 permitted to do that.

15 What they want, they want to establish that the  
16 company has taken an inconsistent position. They can certainly  
17 seek to establish that through their own witnesses and witness  
18 for the company if the company appears here. But, the whole  
19 purpose of the stipulation was to control the cross examination  
20 and the discovery to those matters that the expert actually  
21 chose to rely upon. This expert has specifically disclaimed in  
22 his deposition using the prior testimony for purposes of his  
23 work in this case. The only testimony that he's now offered is  
24 that his experience is that they want the basis for his work.  
25 Well, of course that is always true.

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1           The purpose of the stipulation was to limit the scope  
2 of discovery in cross examination. We have abided by it. They  
3 should abide by it. And if they want to make their own record  
4 about their views of our approach, they can do so through their  
5 own witness. But, you can't take a witness that I've put on  
6 the stand who has talked about a specific opinion based upon  
7 specific work. And I'll say for all purposes this witness is  
8 going to be open to "cross examination" that's all designed to  
9 explore their model. The model -- their model, is not before  
10 the Court. His model is.

11           MR. FINCH: Your Honor, the stipulation says that  
12 simultaneous with the service of the expert reports, the  
13 experts produce their reliance material. The only things that  
14 are outside of the scope of permissible discovery are any notes  
15 or other writings taken or prepared by or for an expert witness  
16 in connection with this matter, including correspondence or  
17 memos to and from, the notes of correspondence with the  
18 expert's assistants and/or clerical support path, one or more  
19 other expert witnesses or non-testifying expert, consultants,  
20 or one or more attorneys for the party offering the testimony  
21 of such expert witness, unless the expert witness is relying  
22 upon those notes or other writings in connection with the  
23 expert's witnesses opinions, draft reports, any/all  
24 communications between the expert and the expert's staff,  
25 unless the expert is relying upon those communications, the

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1 software constituting or underlying any computer model, and any  
2 confidential information disclosed to the expert in a prior  
3 engagement by another client or entity.

4           This -- his prior work, both for Grace and others,  
5 don't fall into any of those categories. And to the extent  
6 they -- they just don't. And these questions were put to Dr.  
7 Florence at his deposition about his prior work for Grace and  
8 his prior work in other cases and I submit to you it's highly  
9 relevant and highly informative to the Court, and not within  
10 the purview of the expert stipulation, his prior work.

11           THE COURT: It seems to me that the particular  
12 question that -- we've gotten so far afield of what the  
13 particular question was at this point. The question was that  
14 he had estimated claims and costs of those claims for the  
15 debtor for more than ten years. And then there was an  
16 objection. I mean, to the extent that the objection is, you  
17 know, whether he has estimated claims for the debtor for more  
18 than ten years, I don't see that that's an objectionable  
19 question. To the extent that after that we're going to get  
20 into work that -- and what it is that he has done for the  
21 debtor, to the extent that you're going to ask him questions  
22 about the reserve work and what that has -- what relevance that  
23 may have to do with the debtor, I don't know if what happened  
24 ten years ago and what's reserved for financial statements is  
25 at issue.

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1           This is not a fraudulent conveyance trial. This is  
2 an estimation trial for what the debtor has to put into this  
3 trust to get through this particular -- or some other entity if  
4 the debtor is not the successful plan proponent -- has to get  
5 into this trust in order to get this case through confirmation.  
6 So what may have been relevant in an estimation trial on  
7 fraudulent conveyance issues and estimations for liability  
8 depending on what the debtor did with particular financial data  
9 and that type of a trial may not be relevant here at all.  
10 Nonetheless, this witness can surely answer whether he has  
11 worked for Grace estimating tort claims for the last ten years.  
12 That objection is overruled. Dr. Florence, you may answer that  
13 question.

14 BY MR. FINCH:

15 A     Yeah. We've done work for Grace -- I say we -- the firm  
16 has done for Grace since about 1995.

17 Q     And the work you have done for Grace was to estimate the  
18 cost that Grace would bear -- prior to the time that Grace went  
19 into bankruptcy, each of the times you've worked for Grace, you  
20 were estimating the cost that Grace would bear to resolve  
21 asbestos personal injury claims while it continued in the tort  
22 system, correct?

23 A     I believe so. We were asked on most of those occasions,  
24 except for, I think, the last engagement in 2000, to estimate  
25 the volume and the timing and the value of claims, both pending

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1 and future, that would be filed against Grace, assuming they  
2 stayed in the tort system.

3 Q And in the 2000 engagement, you estimated the number of  
4 claims but not the value, correct?

5 A That's my recollection. Yes.

6 Q Okay. And the work you did for Grace in 1997, do you know  
7 what purpose they used that work for?

8 A I don't.

9 Q Do you know that they used your estimates -- do you know,  
10 one way the other, whether they used your estimates to evaluate  
11 their solvency for purposes of spinning off the Sealed Air  
12 packaging business?

13 A I don't know precisely how they used my work.

14 Q In all the times you did work for Grace in the past, was  
15 -- strike that. I'll do it in a more specific basis. In fact,  
16 would you agree that there is no TDP that you're aware of that,  
17 for the mesothelioma criteria, restricts payment only to people  
18 who personally mix or personally install asbestos containing  
19 products?

20 A That is --

21 MR. BERNICK: A TDP in existence in connection with  
22 the trust?

23 MR. FINCH: Yes.

24 A I think I answered that earlier, about -- I think it is  
25 non-explicitly, only as a subset of some other criteria. At

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1 least my recollection is of the TDP's I've worked with.

2 Q Isn't it true that there is -- is there any TDP that you  
3 are aware of that has, for the mesothelioma criteria, that  
4 restricts payment only to the people who personally mix or  
5 personally install asbestos containing products?

6 A I think I said no. I mean, is that explicit, only those  
7 two? No.

8 Q So -- okay. So the TDP's for mesothelioma allow valid  
9 claims from people even though they don't personally mix or  
10 personally install asbestos containing products?

11 MR. BERNICK: Objection to the form of the question.  
12 Invalid.

13 THE COURT: Sustained.

14 BY MR. FINCH:

15 Q And isn't it correct that you're not aware of any solvent  
16 defendant in the tort system that restricts payments in  
17 mesothelioma cases solely to people who can demonstrate that  
18 they've personally mixed or personally installed an asbestos  
19 containing product?

20 MR. BERNICK: Objection. A) lack of foundation. B)  
21 that most certainly violates the terms of the stipulation and,  
22 not only that, but implicates potentially confidential  
23 information that this witness may have because he does  
24 consulting for those other clients.

25 MR. FINCH: Your Honor, I asked him exactly that

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1 question in his deposition so, to the extent -- I wasn't asking  
2 about confidential information. The question is, does he know  
3 one way or the other, not what the criteria are, but does he  
4 know of any solvent defendant that restricts payment in  
5 mesothelioma cases solely to people who can demonstrate that  
6 they personally mixed or personally installed an asbestos  
7 containing product.

8 MR. BERNICK: And the answer to that question is it's  
9 plainly barred by the stipulation because to explain or deal  
10 with his answer, we would then have to go into materials that  
11 he has not relied upon in order to demonstrate what it was that  
12 he was talking about, and that was the whole purpose of the  
13 stipulation, is to avoid that inquiry.

14 MR. FINCH: Your Honor, in the deposition, he  
15 answered that he knows of none.

16 MR. BERNICK: It makes no difference what it is in  
17 his deposition. It's not -- we should not be opening the door  
18 to an improper line of inquiry at this trial.

19 THE COURT: The deposition testimony, I think, at  
20 this point, is not necessarily the question. You know, if you  
21 wish to try to introduce his deposition testimony, that's a  
22 different line of inquiry that you may have the opportunity to  
23 do. But while he's here, I think the issue is whether or not,  
24 at this point, there is some privilege. I don't see that there  
25 is a privilege that's been asserted. I'm not aware of whether

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1 that's going to violate the confidential sources. At the  
2 moment, it's a yes or no answer. I don't see how that's going  
3 to violate confidential information.

4 MR. BERNICK: Because, Your Honor, in order for us to  
5 deal with that testimony that he's now said no, we would then  
6 have to unpack what kind of clients it is that he has and what  
7 the basis for his knowledge is in order to explore how broad or  
8 how limited it might be because they will take -- they could  
9 argue on the basis of this answer that, gee, it's not there,  
10 there's no evidence of it, whereas, in fact, the basis for his  
11 testimony is much more limited. I can't go down that road  
12 because I can't ask him to breach his confidences and I don't  
13 have -- shouldn't have to deal with that inference because the  
14 question itself is improper under the stipulation. Dr.  
15 Peterson has all kinds of information that we've not been able  
16 to get into because it's covered by this stipulation. Ms.  
17 Biggs has got all kinds of information that we can't get into  
18 because it's covered by the stipulation. We should not have to  
19 deal with this line of examination. Mr. Finch can't sit there  
20 and pick where he wants to stand by the stipulation and where  
21 he doesn't want to.

22 THE COURT: All right. How is this covered by the  
23 stipulation?

24 MR. BERNICK: Because it's an inquiry into matters  
25 that are part of his experience that he is not relying upon for

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1 purposes of his testimony.

2 THE COURT: Of making his estimate with respect to --

3 MR. BERNICK: That's correct.

4 THE COURT: -- Grace's part?

5 MR. FINCH: Your Honor, I -- the stipulation does not  
6 preclude you from cross examining an expert about stuff he  
7 didn't rely upon. All it says is you can't discover five  
8 limited categories of things. And the five limited categories  
9 of things are what I read to Your Honor earlier. It does not  
10 -- it is not -- it does not preclude me from cross examining  
11 him about stuff he's relied upon in other places and he's not  
12 relying upon here. I mean, that's what you do with an expert;  
13 you cross examine him about the stuff you think he should have  
14 relied upon but didn't.

15 MR. BERNICK: That's correct. And ordinarily the  
16 rules provide for broad cross examination of reliance materials  
17 as well as things that have been reviewed but not relied upon.  
18 That is not the rule that we've adopted in this case.

19 MR. FINCH: It is.

20 THE COURT: Somebody is going to have to show me the  
21 stipulation. I'm sorry.

22 MR. FINCH: Your Honor, I'll move on and I'll pack it  
23 up in a few minutes.

24 THE WITNESS: Can I have water, please?

25 MR. FINCH: It's right here.

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1 THE WITNESS: Thank you.

2 THE COURT: Let me read it, please.

3 MR. FINCH: Sure.

4 (Pause)

5 THE COURT: All right. Well, the only part of this  
6 stipulation that I can see that would apply is 5, "Any  
7 confidential information disclosed to the expert in a prior  
8 engagement by another client or entity if, in fact, this would  
9 be information that was disclosed by another client or entity."  
10 So -- and I can't tell that from the question specifically. So  
11 I guess, Mr. Finch, first of all, what we're going to have to  
12 establish is whether or not he -- I suppose we can get as far  
13 as saying whether he is or is not aware of any solvent  
14 defendant who makes this restriction. But then the next  
15 question is going to have to be, as a follow-up, you know,  
16 whether the basis for that information is confidential  
17 information. And if it is, that's going to end this inquiry.

18 MR. BERNICK: Right.

19 MR. FINCH: That's fine. My question, as posed, is  
20 is he or is he not aware of any solvent defendant that  
21 restricts payment in mesothelioma cases to people -- to only  
22 those people who personally mix or personally install asbestos  
23 containing product.

24 THE COURT: And regardless of the outcome, the next  
25 question is whether the basis for his information is based on

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1 confidential information and whether he is or is not so aware.  
2 If it's based on information that is confidential, that ends  
3 the inquiry.

4 MR. FINCH: I understand, Your Honor.

5 THE COURT: So at that point in time, if it's based  
6 on confidential information, I will be striking the testimony.

7 MR. BERNICK: Yeah. Well, the other -- I'm sorry,  
8 Your Honor. I think that the other way of doing it is simply  
9 ask whether the question potentially implicates confidential  
10 information.

11 THE COURT: That's --

12 MR. BERNICK: If it does, that's the end of it.

13 THE COURT: That's true too.

14 MR. BERNICK: But the other thing is that I would  
15 hasten to point out to the Court, the little three, or whatever  
16 it is, Romanette iii, picks up any materials that have been  
17 furnished, any oral or written communication between an expert  
18 witness and dah, dah, dah, dah, one or more attorneys for the  
19 party offering the testimony of such witnesses. So any  
20 materials, be they oral or written, that have come from Grace's  
21 counsel -- I would imagine that includes all of this testimony  
22 -- that also is picked up by Romanette iii, unless the expert  
23 witness is relying upon it.

24 THE COURT: All right. So I think if you  
25 substantiate the basis first for where information is coming

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1 from, Mr. Finch, we would probably be in safer grounds.

2 BY MR. FINCH:

3 Q Dr. Florence, your reliance materials that you produced in  
4 this case, would you agree me that experts' work needs to be --  
5 in order to be reliable, it needs to be replicable?

6 A I would think so. Sure.

7 Q And so in order for the ACC and FCR experts to replicate  
8 your work, you produced a lot of back-up materials, correct?

9 A I did. Yes.

10 Q And you included within the back-up materials the stuff  
11 you relied on, were the deposition transcripts that I showed  
12 you in Exhibit 1, correct?

13 MR. BERNICK: I object to the -- that's a compound  
14 and misleading question. He produced the reliance materials  
15 presuming that, because it was produced as reliance materials,  
16 it then is responsive or is linked to the prior question which  
17 asks about reproducibility. This is just -- Your Honor, this  
18 is playing around. We ought to just get to the core of the  
19 issue and have him find out, you know, how he got these  
20 deposition transcripts.

21 MR. FINCH: Your Honor, I'll move on. The deposition  
22 transcripts were relied upon by Dr. Florence. They said -- he  
23 wouldn't have had to produce them if he wasn't relying on them.

24 BY MR. FINCH:

25 Q Dr. Florence, sticking with your first report --

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1 (Pause)

2 Q All right. Dr. Florence, without relying on any  
3 confidential material from any source whatsoever, are you aware  
4 of a single defendant in the tort system that restricts payment  
5 in mesothelioma cases solely to people who can demonstrate that  
6 they personally mixed or personally installed an asbestos  
7 containing product?

8 MR. BERNICK: Again, Your Honor, that presumes that  
9 he, a) can set that to one side; b) we would then find out what  
10 he had to set to one side; and, c) to the extent that it's  
11 Grace, Grace's materials are independently protected by little  
12 Romanette iii of the stipulation.

13 THE COURT: No. The question was, any solvent  
14 defendant in the tort system. I think we can assume that Grace  
15 is, a) not a solvent defendant --

16 MR. BERNICK: No.

17 THE COURT: -- and, b) not in the tort system at the  
18 moment.

19 MR. BERNICK: But that's not true. It's the materials  
20 that were provided that is the -- this witness was provided  
21 with materials during the -- that relate back to the period of  
22 time in which Grace was in the tort system.

23 THE COURT: Wait. Are we talking currently?

24 MR. BERNICK: Yes.

25 THE COURT: The question was are you aware,

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1 currently, of any solvent defendant in the tort system.

2 MR. BERNICK: Today? Yes.

3 THE COURT: Yes. That's the question.

4 MR. BERNICK: If that --

5 BY MR. FINCH:

6 Q Without relying on any confidential information, Dr.  
7 Florence, are you aware of solvent defendant in the tort system  
8 that restricts its payments in mesothelioma cases just to  
9 people who personally mix or personally install an asbestos  
10 product?

11 THE COURT: You may answer that.

12 BY MR. FINCH:

13 A I think, as I said in my deposition, I'm not really an  
14 expert on what all the solvent defendants do in terms of the  
15 negotiation posture but I think an answer, I'm not aware of  
16 any, though I'm not aware of a lot in that regard.

17 Q Okay. Now, sticking with your expert report, the lung  
18 cancer criteria --

19 THE COURT: The second one or the first one?

20 MR. FINCH: The second.

21 THE COURT: All right.

22 MR. FINCH: The second one. The one dated September  
23 25, 2007.

24 THE COURT: Okay. Thank you.

25 BY MR. FINCH:

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1 Q The minimum causation criteria for lung cancer is number  
2 three on Page 2, correct, Dr. Florence?

3 A Correct.

4 Q It says, "Minimum causation criteria for lung cancer  
5 claims of diagnosis of asbestos based on the B-reader report of  
6 a reliable B-reader, and a reproducible ILO score of 1/0 or  
7 greater," correct?

8 A That's correct.

9 Q Isn't it true that Grace's assumed criteria do not allow  
10 for the possibility that the claimant could have a qualifying  
11 lung cancer claim based on pathology as opposed to X-rays?

12 A With regard to our estimate?

13 Q Yes.

14 A No, they could. In fact, I was rereading my deposition  
15 and I think I must have misunderstood your question then. What  
16 we did, and I think what this handwritten chart covered, was if  
17 a claimant said they were relying on pathology evidence, then  
18 we assumed that that evidence -- though it was not specifically  
19 reviewed, we assumed that that evidence would qualify at the  
20 same rate that the X-ray evidence would have qualified.

21 Q Okay.

22 A So, to that extent, the pathology evidence would have been  
23 accepted.

24 MR. FINCH: Can I have the ELMO, please?

25 (Pause)

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1 BY MR. FINCH:

2 Q So you assumed that, for people who were relying on  
3 pathology, they would only qualify at the same rate as the  
4 people who were relying on X-rays, the 8.6 percent rate,  
5 correct?

6 MR. BERNICK: Objection to the form of the question.  
7 The little header that you have there doesn't say anything  
8 about pathology. If you want to display that document, I think  
9 the witness' -- the question to the witness should change.

10 MR. FINCH: Your Honor, he just testified that the  
11 people who qualified based on pathology would qualify at the  
12 same rate as the people who qualified for X-rays.

13 BY MR. FINCH:

14 Q Isn't that right, Dr. Florence?

15 MR. BERNICK: That's not the point, Your Honor. The  
16 category is -- the 8.6 percent is applied to the category, not  
17 to the pathology specifically.

18 BY MR. FINCH:

19 Q Dr. Florence, what percentage of people who were relying  
20 on pathology did you assume would qualify?

21 A We assumed that, meeting the other criteria, that if the  
22 reliance was on a pathology report, they would be qualified at  
23 the same rate, the 8.6 percent, as the individuals that had  
24 X-ray proof.

25 Q So is it correct that --

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1 A Reproducible X-ray proof.

2 Q So you were assuming that only 8.6 percent of the people  
3 who said their lung cancer was related to asbestos based on  
4 pathology would qualify?

5 A That's correct.

6 Q Did you hear Dr. Weill's testimony that pathology was the  
7 gold standard for diagnosing asbestosis?

8 A I did not -- was not present for Dr. Weill's testimony.

9 Q Are you aware that if something is diagnosed based on  
10 pathology, there is no dispute that the asbestosis is present?

11 A I was not present for Dr. Weill's testimony. Correct.

12 Q Who told you to use the 8.6 percent for the people who  
13 were relying on pathology?

14 A I think that was a judgment that we made.

15 Q I take it you didn't discuss that with Dr. Weill or any of  
16 the medical experts?

17 A I did not discuss it with Dr. Weill.

18 Q To the extent that there are differences in the criteria  
19 that Grace required before making payments on a claim prior to  
20 the time it went into bankruptcy and the criteria that you've  
21 been asked to apply now, you made no attempt to reconcile the  
22 two in your report, correct?

23 MR. BERNICK: Can I have the question read back,  
24 please?

25 MR. FINCH: There's no read-back. I'll just repeat

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1 the question.

2 Q To the extent that there were differences in the criteria  
3 that Grace used to pay claims before it went into bankruptcy  
4 and the specified assumptions you were asked to assume here,  
5 you made no attempt to reconcile the two in your report,  
6 correct?

7 A That's correct. Our job was to estimate the number of  
8 claims that would meet the criteria and what those claims'  
9 value might be.

10 Q And you haven't done any analysis as to whether Grace paid  
11 any historically settled claims using the specified criteria  
12 that you've been asked to assume here as a prerequisite to  
13 payment, have you?

14 THE COURT: I'm sorry. I apologize, Mr. Finch.

15 MR. FINCH: Sure.

16 THE COURT: I need this one -- did no analysis to see  
17 --

18 BY MR. FINCH:

19 Q You have done no analysis of whether Grace used the  
20 specified criteria that you're applying here as a prerequisite  
21 to paying money to resolve claims in the tort system?

22 A I have done no analysis of Grace's methods for paying  
23 claims in the tort system. In other words, what analysis they  
24 may have done on those claims did not fall within the scope of  
25 what I was asked to do.

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1 Q Okay. And it's correct that you did not attempt to  
2 estimate the liability for pending and future asbestos claims  
3 that Grace would face if it had continued in the tort system  
4 after April 2001, correct?

5 A I was not asked to estimate if they had continued in the  
6 tort system. That was not an assumption. Correct.

7 Q And you don't have any opinion as to what Grace's  
8 liability for pending and future asbestos personal injury  
9 claims as of April 2001 would be if it hadn't gone into  
10 bankruptcy?

11 A I haven't done that analysis. No, I don't have an  
12 opinion.

13 MR. FINCH: Can I have the ELMO?

14 (Pause)

15 BY MR. FINCH:

16 Q Okay. You were asked some questions by Mr. Bernick about  
17 the data that you rely on in two different situations. Do you  
18 recall this graphic?

19 MR. FINCH: And, for the record, it's GG-2310.

20 BY MR. FINCH:

21 A I do.

22 Q Okay. First of all, the first one, Future Trust Funding,  
23 isn't it correct that what you used the TDP analysis for is not  
24 to determine the amount of funding that goes into the trust but  
25 to determine the payment percentage that the trust would pay

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1 out on claims, given the relationship between its assets and  
2 projected liabilities?

3 A Correct. I think that's what I tried to say. I may not  
4 have said it very artfully.

5 Q Okay. So if we struck Funding from this and instead put  
6 Future Trust estimated payment percentage, that would be  
7 accurate, correct?

8 A I believe so. Yes.

9 Q Okay. Now, for trusts --

10 A I'm sorry. The only clarification would be this graphic  
11 has two options that have Trust and Tort. And I guess -- I'm  
12 not quite sure where bankruptcy would fall so --

13 Q Okay. But for --

14 A It could fall under trust; it could fall under -- I don't  
15 know. I guess it can't fall under tort so --

16 Q You've done two types of estimates historically in your  
17 career. One is to estimate the future tort system costs of  
18 some asbestos defendant, correct?

19 A We've estimated tort system costs. Correct.

20 Q Right. And you didn't do that work here in this case,  
21 this estimation case?

22 A That's correct. We didn't.

23 MR. BERNICK: I'm sorry. The question presumes, by  
24 tort system, this has been used in a very general kind of way,  
25 a return to the state court administered tort system. That's a

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1 clear question.

2 BY MR. FINCH:

3 Q By tort system, I mean that Grace would continue to  
4 resolve the cases in whatever form it found itself in for  
5 litigating asbestos personal injury claims, whether it's state  
6 courts or federal courts, wherever the cases were pending at  
7 the time it went into bankruptcy.

8 MR. BERNICK: Objection. That's a misleading  
9 question that lacks foundation.

10 THE COURT: I am not certain what that question  
11 means.

12 BY MR. FINCH:

13 Q Dr. Florence, what do you mean by future tort system  
14 costs?

15 A That would be the cost that a defendant might incur by  
16 settling or litigating claims in the tort system --

17 Q And what do you mean --

18 A -- in the future.

19 Q What do you mean by the tort system?

20 A In the court system.

21 Q In the courts in which the cases historically are pending,  
22 correct?

23 A In the court system, whatever that may be; federal, state,  
24 city. I make no distinction.

25 Q Okay. Now, for the future trust projections, what you're

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1 doing is trying to estimate the cost that a trust would incur  
2 to resolve claims over time in the future, correct?

3 A I'm usually trying to estimate -- right -- the volume, the  
4 timing, and the cost of resolution of claims against the trust.

5 Q' Okay. And here you have drivers of payments, you have  
6 claims data, and you have criteria. The TDP criteria, that's  
7 not an assumption, that's the rules that the trust says, we  
8 will pay these claims and not pay those claims, correct?

9 A Correct. The TDP usually specifies, obviously sometimes  
10 with verbiage, what should be paid and what shouldn't be paid.

11 Q Okay.

12 A And so those are the criteria.

13 Q Okay. And the claims data under the TDP, once a trust has  
14 had its doors open for a couple of years, you have empirical  
15 data as to how many claims got filed against the trust and how  
16 many of them got paid by the trust, correct?

17 A We do. We would have data on, in essence, the equivalent  
18 of claims history for the trust.

19 Q Okay. And so you would have empirical data as to the  
20 claims history and empirical data as to the criteria where a  
21 trust has been in operation for some period of time and you  
22 would use that to project the future liability of the trust,  
23 correct?

24 A Correct.

25 Q Okay. And for trusts that just open their doors, the ones

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1 that -- say, the Federal Mogul Trust, if it opens its doors in  
2 three months or something, the TDP criteria are -- they're not  
3 an assumption; they're a given? I mean, they are -- there is  
4 empirical data as to what the TDP are, correct?

5 A The TDP are assumptions.

6 Q Well, they're not assumptions? They are criteria that the  
7 trust will follow? You have those criteria, correct?

8 A That's right. Those are specified.

9 Q Okay. And then where do you get the claims history for a  
10 trust that hasn't yet started operation yet?

11 A Well, for a trust that's just opening its doors, you try  
12 to get it from the claims history up until that time.

13 Q The claims history of the company prior to the time it  
14 went into bankruptcy?

15 A Correct.

16 Q Okay. For future tort system costs, you have claims data.  
17 What does that refer to?

18 A Which one? Trust or --

19 Q Future tort system costs claims data. What does that  
20 refer to, Dr. Florence?

21 A That would be the history of the defendant in the tort  
22 system as reflected in the information about the claimants and  
23 the status of those claims and the outcome of the claims.

24 Q And that's empirical data, correct?

25 A It is.

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1 Q That's not an assumption, correct?

2 A The data is an empirical base. Correct.

3 Q Okay. And then you have the criteria that the defendant  
4 actually applied to resolve claims in the tort system, correct?

5 A Sometimes you do and sometimes you don't. Sometimes it's  
6 a black box process and sometimes it's more clear than others.

7 Q Okay. But -- I think I wrote this down -- sometimes you  
8 know what the criteria are; i.e., we will pay mesothelioma  
9 claims if they meet the following criteria, and they have that  
10 in a settlement agreement and sometimes you don't know that and  
11 you can see the outcome of what applying those criteria would  
12 do, correct?

13 MR. BERNICK: I object to the form of the question.  
14 Also, I think the question assumes that those are the only two  
15 alternatives.

16 BY MR. FINCH:

17 Q What did you mean, Dr. Florence, about the outcome of  
18 applying the criteria where it was a black box to you?

19 A There may be instances where you don't know -- either you  
20 don't know the specific criteria that was used against -- in  
21 evaluating a specific claim or a group of claims. And in that  
22 instance, all you know is this group of claims had these  
23 characteristics and they were paid or not paid a particular  
24 amount of money. I mean, so it's -- in essence, you may not  
25 know specifically what the criteria were in judging those

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1 claims but you know that they were closed or closed for some  
2 amount of money.

3 Q Okay. So you know what percentage of them got paid, for  
4 example? You can tell that, right?

5 A Well, sure. You can find out what percentage of claims  
6 are paid but I guess the distinction I was trying to draw is  
7 there may be groups of claims, segments of claims, in this  
8 claims history, some of which you know the criteria for, some  
9 of which you don't know the criteria for, some of which all you  
10 know is the outcome of the claim.

11 Q But for all of them, whether you know the criteria or not,  
12 you have empirical data as to the outcome of the company's  
13 application of whatever criteria it was using to resolve  
14 claims, correct?

15 MR. BERNICK: Objection. Lack of foundation. This  
16 is a very abstract --

17 MR. FINCH: He just testified to it on direct, Your  
18 Honor.

19 THE COURT: Yes. Overruled.

20 MR. BERNICK: No, that's not what he testified to --

21 THE COURT: I think that's clear enough.

22 MR. BERNICK: -- but go ahead.

23 THE COURT: You may answer, Dr. Florence.

24 BY MR. FINCH:

25 A I'm sorry.

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1 THE COURT: Whether you have empirical data for the  
2 outcomes of all the claims.

3 BY MR. FINCH:

4 A You usually have -- you usually have data on what the  
5 status of the claim is and, if the claim is closed, you usually  
6 have data on whether it was closed for money or -- and, if so,  
7 how much, or whether it was not closed for money.

8 Q And from that, you can calculate what percentage  
9 historically of claims the defendant paid money to resolve,  
10 correct?

11 A You could. You could calculate a simple percentage.  
12 Right.

13 Q And that's -- and you can calculate what the average value  
14 of the claims that got paid, received from that defendant,  
15 correct?

16 A Sure.

17 Q And those two parameters, the percentage of claims that  
18 get paid and the value paid to those claims, that's empirical  
19 data that you can analyze? It's not an assumption, correct?

20 A Well, with regard to criteria, I guess you're making the  
21 underlying assumption that there was commonality in the  
22 criteria that was used, whatever they were.

23 Q And generally speaking, in estimating the future tort  
24 system costs of a defendant, you assume going forward there  
25 will be -- they will apply the same criteria they had

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1 historically, correct?

2 MR. BERNICK: I'm sorry. Was the question you will  
3 assume?

4 BY MR. FINCH:

5 Q That you -- in making a forecast for a tort system  
6 defendant, you look to the past history of what percentage of  
7 claims they paid and how much they paid them for, correct?

8 A That's one of the things you look at. Sure.

9 Q And then, to estimate the liability going forward, you  
10 project that cost by using the empirical data you have as to  
11 the historically closed claims as the basis for making the  
12 forecast?

13 A Well, I think I agree, with the understanding that that  
14 may not be true for all of the claims. In other words, in the  
15 tort system, we've frequently been in situations where, as an  
16 assumption, the client may say, we have this going on for this  
17 attorney, or we have this agreement in this jurisdiction, and  
18 therefore it's -- the simple average calculation of what we  
19 paid for the last six months or the last six years in this  
20 state is not applicable. Or we have a settlement agreement  
21 with the Florence firm and the Florence firm specifies these  
22 criteria in this amount of money. So I guess in answer to your  
23 question, in general, you look to the history and then the  
24 criteria. Some of those criteria are explicit, like the ones  
25 I've given you. Some of the criteria are kind of black box and

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1 all you know is some criteria was applied and I know the result  
2 of those criteria.

3 Q And you rely on the company's historical experience in the  
4 tort system for making an estimate of what its liability would  
5 be in the tort system because it's an empirical demonstration  
6 of what has actually happened with that company, correct?

7 MR. BERNICK: Objection to the form of the question.  
8 Actually happened to that company in what regard?

9 MR. FINCH: In the tort system.

10 MR. BERNICK: Well, that's the same problem. It's  
11 the same problem.

12 THE COURT: That is the same problem.

13 MR. BERNICK: And at this point, Your Honor, I think  
14 that there have been 25 minutes worth of questions all dealing  
15 with the methodology that he's already testified to on direct  
16 examination.

17 THE COURT: That's proper cross examination. If they  
18 want to spend 25 minutes on methodology, they're permitted to  
19 do it. But I do believe that there is a problem with the  
20 question the way it was asked. Please rephrase the question.

21 BY MR. FINCH:

22 Q Isn't it true, Dr. Florence, that you rely on the  
23 company's historical experience in the tort system for making  
24 an estimate of what its future liability would be in the tort  
25 system because the historical experience is an empirical

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1 demonstration of what actually happened with respect to that  
2 company?

3 MR. BERNICK: It's the exact same question that he  
4 asked two minutes ago and it's still defective.

5 MR. FINCH: It's not the same question, Your Honor.

6 THE COURT: Well, it changed to, isn't it true, so  
7 it's not the exact same question but I think the purpose is the  
8 same. But I think that there are a lot of assumptions that I  
9 haven't heard this witness testify to. He is an expert but I  
10 think you have to get him to agree with the assumption. I  
11 haven't heard him testify to all of the assumptions that you  
12 have put into this question.

13 BY MR. FINCH:

14 Q When you are -- these are the places where you have  
15 testified as an expert on estimating asbestos liabilities, Dr.  
16 Florence?

17 A That's correct.

18 Q In Babcock and Wilcox, you estimated the company's  
19 liability for asbestos claims twice, correct?

20 A I did.

21 Q And in each case, you relied on the company's past history  
22 as -- in terms of the percentage of claims paid and the value  
23 of the claims that were paid in making your projections,  
24 correct?

25 A Correct. We were asked to assume that, in both instances,

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1 that the company would have been in the tort system, would not  
2 have been in bankruptcy and would be settling claims in the  
3 tort system.

4 Q Okay. And other than that one assumption --

5 A And we used --

6 Q -- that the company would --

7 MR. BERNICK: Could the witness please finish his  
8 answer?

9 MR. FINCH: Sure.

10 BY MR. FINCH:

11 A We used the historic experience up until that time as a  
12 reflection of that base that I was talking about earlier, that  
13 base experience up to the time that we were asked to make the  
14 forecast.

15 Q And other than the one assumption that you were to assume  
16 that the company would still be in the tort system, you were  
17 not told any other assumptions to apply to estimate the  
18 liability, correct?

19 MR. BERNICK: In which case?

20 MR. FINCH: Babcock.

21 MR. BERNICK: Fraudulent conveyance or --

22 MR. FINCH: Yes.

23 MR. BERNICK: -- information?

24 MR. FINCH: Both.

25 THE COURT: Well, let's take them one at a time.

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1 MR. FINCH: Okay.

2 BY MR. FINCH:

3 Q Let's take the fraudulent conveyance case.

4 (Pause)

5 A I'm sorry, Mr. Finch. I don't -- I can't recall whether  
6 we were given additional assumptions in either one of those.

7 Q In Armstrong -- you testified in the Armstrong  
8 confirmation hearing about two years ago, correct?

9 A I did.

10 Q And there your estimate of the liability was based on the  
11 company's past history of resolving cases in the tort system?

12 A It was based on the assumption that the company would have  
13 remained in the tort system and not filed for bankruptcy.

14 MR. FINCH: One moment, Your Honor.

15 (Pause)

16 MR. FINCH: May I approach the witness, Your Honor?

17 THE COURT: Yes. Mr. Finch, may I ask the witness to  
18 clarify something for me, please? Dr. Florence, the question  
19 you're being asked is whether you were making -- you were  
20 testifying based on the assumption that the company's past  
21 history of resolving claims in the tort system. The question  
22 you're answering is that you were told to assume the company  
23 would remain in the tort system. Are they the same thing?

24 THE WITNESS: (No audible response).

25 THE COURT: I just want to make sure that you're --

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1 that in answering this, that you're either -- that you're  
2 saying yes. I'm not sure if you're saying yes and then going  
3 on or if you're saying no and going on. So I just would like  
4 to know whether the question and the answer are the same.

5 THE WITNESS: Maybe I should hear the question again  
6 to make sure I'm answering the right question.

7 THE COURT: All right. Thank you. Would you repeat  
8 that question for me, Mr. Finch?

9 MR. FINCH: Which one?

10 THE COURT: Either one. The question was, when he  
11 testified in AWI at the confirmation hearing, he was told to  
12 estimate liability based on the assumption of the company's  
13 past history of resolving cases in the tort system. Exactly  
14 how you phrased it, I can't say, but the witness did not answer  
15 using the same words you did. I want to make sure that the  
16 answer and the question are the same, if they are.

17 MR. FINCH: Okay.

18 BY MR. FINCH:

19 Q Dr. Florence, do you have the Armstrong report in front of  
20 you?

21 A I do.

22 Q Okay. And in that case, you estimated what Armstrong's  
23 liability would be as of the bankruptcy petition date, correct?

24 A Correct, if they remain in the tort system.

25 Q If they remain in the tort system. And with that

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1 assumption, if they remain in the tort system, you estimated  
2 their liability to be north of \$4 billion, correct?

3 A I did.

4 Q Okay. Is it correct that the way in which you estimated  
5 Armstrong's liability for pending and future asbestos claims  
6 was to estimate -- the future claims were valued using the  
7 average settlement value incurred by Armstrong to resolve  
8 claims in 1999 to 2000, on Page 2?

9 MR. BERNICK: Your Honor, I -- if he's now being  
10 asked what he was told to do, I really don't know what in the  
11 world relevance that --

12 MR. FINCH: Let me pick that up. v

13 BY MR. FINCH:

14 Q Dr. Florence, were you --

15 MR. BERNICK: Excuse me. Is the question withdrawn?

16 MR. FINCH: The question is withdrawn.

17 BY MR. FINCH:

18 Q Dr. Florence, other than the assumption that Armstrong did  
19 not go into bankruptcy, were you told by your client how to go  
20 about estimating the liability?

21 A I may have been given assumptions about the case load. In  
22 other words, there were questions about -- that we may have had  
23 about the historic filings and, as I mentioned before, patterns  
24 we might have seen in the historic filings, trying to  
25 understand that. And if a client said this was a result of a

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1 moratorium, this was a result of a settlement agreement, those  
2 would be assumptions that we would have accepted going forward.

3 Q But you don't know -- you don't recall being given any of  
4 those assumptions by --

5 A I don't remember in Armstrong's case.

6 Q And, in Armstrong, you used the company's past history to  
7 project the liability?

8 A Correct. I used their past historic experience, right, in  
9 the tort system.

10 Q And your client in that case was the future claimant's  
11 representative, correct?

12 A It was. But I guess -- that's not what I'm being asked to  
13 do here. I'm being asked to estimate the claims that are  
14 qualified under certain criteria so I guess that's where I'm  
15 having trouble. I --

16 Q You don't have any empirical evidence that Grace ever  
17 resolved a single asbestos claim using the criteria you've been  
18 asked to assume here, correct?

19 A I don't know what criteria Grace may have used  
20 historically. I think I testified to that earlier.

21 Q In Armstrong though, you had empirical evidence as to the  
22 outcome of the criteria that whatever criteria Armstrong  
23 applied historically, correct?

24 THE COURT: I'm sorry. Would you -- for me, would  
25 you repeat that?

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1 MR. FINCH: Sure.

2 BY MR. FINCH:

3 Q In Armstrong, you had -- Armstrong had a set of criteria  
4 that it applied historically to resolve cases, right, Dr.  
5 Florence?

6 A I assume they did.

7 Q Okay. And you had empirical evidence of the outcome of  
8 their application of those criteria, correct?

9 A I had the -- I had historical experience or empirical data  
10 on the outcome of their settlement or their tort system  
11 experience, presumably using some criteria. I don't know what  
12 those criteria were or how they may have changed over time.

13 Q And you estimated the liability -- when you estimated the  
14 liability, you assumed that Armstrong would continue to apply  
15 in the future the same criteria it applied historically,  
16 correct?

17 A By necessity, since we didn't know other than if there  
18 were some pockets that we knew about, the assumptions that I  
19 was saying about.

20 MR. BERNICK: I have to object at this point. There  
21 is a clear lack of foundation with respect to Armstrong in  
22 particular. We've got the witness talking about a case where  
23 he has just said he doesn't recall exactly what went into that  
24 case and particularly, as Mr. Finch well knows, on the last  
25 question, what he's now asked the witness to verify is an

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1 impossibility. Again, Your Honor, I don't know --

2 THE COURT: Okay. That objection is simply overruled  
3 because the witness basically has already answered the  
4 question, saying that he was using the information that was  
5 given to him and has no other information about criteria.

6 BY MR. FINCH:

7 Q All right. In your report at Page 1 in this case --

8 THE COURT: This is Exhibit 462?

9 MR. FINCH: Exhibit 462.

10 BY MR. FINCH:

11 Q In May of 1997, ARPC was again asked to estimate the  
12 volume, cost and timing of pending and future claims for  
13 asbestos related injuries filed against Grace? Do you see  
14 that, Dr. Florence?

15 A I do.

16 Q And you write later, "As before, the estimate was based  
17 solely on Grace's tort system experience"?

18 A Yes.

19 (Pause)

20 MR. FINCH: Your Honor, may I approach the witness?

21 THE COURT: Yes.

22 (Pause)

23 MR. FINCH: 175, Dave. May I approach the witness,  
24 Your Honor?

25 BY MR. FINCH:

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1 Q Dr. Florence, I have put what has been marked ACC-109 in  
2 front of you.

3 MR. BERNICK: Do you have an extra copy of that made?

4 MR. FINCH: We have an extra copy.

5 BY MR. FINCH:

6 Q Dr. Florence, do you recognize ACC-109? Beginning on the  
7 second page is a report you prepared for Grace in May of 1997?

8 THE COURT: This isn't in the binder. This report --

9 MR. FINCH: Oh. May I have another copy, Dave?

10 THE COURT: The AWI report wasn't either, if you're  
11 marking it. Thank you.

12 MR. FINCH: We could also have the ACC --

13 THE COURT: Thank you.

14 BY MR. FINCH:

15 Q Dr. Florence, do you recognize ACC-109 as the report you  
16 prepared for Grace in May of 1997?

17 A This looks like a -- it looks like our report that was  
18 prepared in '97.

19 Q And you -- the scope of your engagement in 1997 was to  
20 estimate Grace's liability for pending and future asbestos  
21 claims?

22 A I think so. Let me just look at -- I didn't prepare this  
23 report. This was prepared by one of my associates.

24 (Pause)

25 A Yes. This looks like a report of an estimate of pending

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1 and open claims and a forecast of claims to be filed against  
2 Grace.

3 Q Okay. Could you turn to the page that's marked 79-0534?

4 A Yeah.

5 MR. BERNICK: Your Honor, I would object to this.  
6 Again, it's beyond -- it's precluded by the stipulation. This  
7 is an exhibit to the Beber (phonetic) deposition and also to  
8 the Poser deposition. It actually is a document produced from  
9 Grace's files. If it came to the attention of this witness, it  
10 did so from Grace and therefore is picked up by the  
11 stipulation.

12 MR. FINCH: Your Honor, this -- Dr. Florence and his  
13 partner -- let me lay a foundation.

14 BY MR. FINCH:

15 Q Dr. Florence, Dan Rorke (phonetic) works for AR -- at the  
16 time this report was written, you and Dr. Rorke both worked for  
17 KPMG?

18 A We did. Right.

19 Q And you were asked by W.R. Grace to prepare forecasts of  
20 the volume and timing of future claims for asbestos related  
21 injuries expected to be filed against Grace and the costs  
22 associated with disposal of those claims?

23 A KPMG? Yes.

24 Q Yes. And you prepared this report? It didn't come from  
25 you -- to you from Grace in the first instance? You prepared

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1 it and gave it to Grace, correct?

2 A I didn't prepare this report but KPMG prepared the report.

3 Q KPMG prepared the report and KPMG was authorized to do the  
4 work on behalf of Grace, correct?

5 A KPMG was retained by Grace to do the work. Yes.

6 Q And there was a letter that you prepared that went to  
7 Wachtell Lipton that summarizes the results of this report,  
8 correct?

9 A I don't recall the letter but --

10 MR. FINCH: John, can we show ACC-175, the last page?  
11 Next to the last page. Sorry.

12 BY MR. FINCH:

13 Q Is that your signature on Page 25-1634, Dr. Florence?

14 A It is.

15 Q And could you turn to Page 24-1632?

16 MR. BERNICK: I don't have this document.

17 MR. FINCH: The only copy I have is with me. I'm  
18 just going to use this document on the screen. Can you see it  
19 on the screen?

20 MR. BERNICK: No, not particularly but go ahead.  
21 We'll see how far we get.

22 THE COURT: No one can see it on the screen.

23 MR. FINCH: Can you blow it up, John? Make it  
24 bigger? The first one, estimating bodily injury liability.  
25 Can you see that, Your Honor?

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1 THE COURT: Yes.

2 MR. FINCH: Okay.

3 BY MR. FINCH:

4 Q You write in this -- do you know Mr. Wilensky (phonetic),  
5 Dr. Florence?

6 A I'm sorry. Which Wilensky? Is this the addressee to the  
7 letter?

8 Q Yes.

9 A I met him. Yes.

10 Q He's a lawyer for -- he was a lawyer acting for W.R. Grace  
11 in 1997, correct?

12 A I met him. Yes.

13 Q Okay. Now, what this -- what you write here is, "The  
14 estimate of indemnity arising from BI claims is obtained by" --  
15 and then you describe the steps that you follow, one, two,  
16 three, four, correct?

17 A Correct.

18 Q Okay.

19 A I see that.

20 Q The -- now, computing indemnity for an injury category is  
21 the product of three factors. The sum of the number of pending  
22 claims --

23 MR. BERNICK: Objection. I would object. I would  
24 object to this document being read. I object to the witness  
25 being confronted with this document. I object to the witness

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1 being confronted with the document this is ancillary to.  
2 Paragraph Romanette iii of the stipulation specifically  
3 precludes any oral or written communication between an expert  
4 witness, i.e., Dr. Florence, and the expert's witness  
5 assistants or more than -- or one or more attorneys for the  
6 party offering the testimony. The attorneys in this case are  
7 the Wachtell Lipton firm. They are counsel for Grace. The  
8 underlying document is a document communicated between Mr.  
9 Florence's firm and Grace and counsel for Grace. All of them  
10 are specifically picked up in the stipulation and they are  
11 specifically barred. And I will note that when it comes to Dr.  
12 Peterson, I took his deposition. It turns out he did earlier  
13 analyses of Grace back in the 1990's and I didn't see those.  
14 Why? Because they were not relied upon in connection with this  
15 case.

16 And I will further add we are now over an hour into  
17 the examination, an hour and fifteen minutes of the  
18 examination. We were given a total estimate of two and a half  
19 hours for the cross examination of this witness. And all  
20 that's happened so far is that Mr. Finch has wanted to pursue  
21 his case through this witness. He's got other people that can  
22 pursue it. It's not proper examination for this afternoon.

23 MR. FINCH: Your Honor, the estimates of cross were  
24 dependent upon lack of -- it was on the assumption there  
25 wouldn't be a lot of time on speaking objections and colloquy

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1 with the Court. This is not picked up by the expert  
2 stipulation. This document was produced to the United States  
3 Government. It's a no sense confidential and I'm establishing  
4 that when Dr. Florence estimated Grace's liability in the past,  
5 he used a methodology very similar to that used by Dr. Peterson  
6 and Dr. Biggs. And I believe that is highly relevant. It's  
7 not precluded by the stipulation.

8 THE COURT: Wait. This letter between an expert  
9 witness and counsel was submitted to the Federal Government and  
10 that's how it came into the ACC's possession?

11 MR. FINCH: It came into the ACC -- it was produced  
12 in discovery to the ACC. It was turned over to the Federal  
13 Government in response to a subpoena. There is no  
14 confidentiality whatsoever left with respect to this document.

15 MR. BERNICK: Your Honor, what happened was, it was  
16 turned over in connection with the Sealed Air litigation. It  
17 was turned over pursuant to a protective order. The Federal  
18 Government then subpoenaed documents from Grace, including  
19 these documents, and they were turned over to the Federal  
20 Government in connection with their subpoena and the ACC and  
21 the FCR now take the position that that was a waiver. Mr.  
22 Finch specifically told me before he used such a document he  
23 would alert us and that's why we don't have any copies --

24 MR. FINCH: I would --

25 MR. BERNICK: Excuse me -- we don't have copies of

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1 this document here this afternoon. This is yet another  
2 dimension of why it is foreclosed under the stipulation. It is  
3 a communication under Romanette iii between the witness, the  
4 expert, and Grace through its counsel, that is not relied upon  
5 in connection in connection with this.

6 MR. FINCH: Your Honor, I would offer ACC-175 and  
7 ACC-109.

8 THE COURT: At this point, I have no foundation for  
9 any of these documents. I don't -- I mean, this witness  
10 specifically has indicated that although he worked for KPMG  
11 with respect to 109 -- I don't even know what 175 is yet. I  
12 don't think the witness has said anything about it except a  
13 part of it, I think, includes a letter that he signed. I  
14 apologize if there's something more. He did say he signed a  
15 letter.

16 MR. FINCH: Let me lay a foundation.

17 BY MR. FINCH:

18 Q Dr. Florence, you did work in 1997 that resulted in an  
19 estimate of Grace's asbestos liability, correct?

20 THE COURT: For what purpose, Mr. Finch?

21 MR. FINCH: For purposes of projecting the future  
22 costs of asbestos claims in the tort system.

23 BY MR. FINCH:

24 Q Correct?

25 MR. BERNICK: Well, actually, the witness can testify

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1 he knows -- Mr. Finch well knows this was done specifically for  
2 the Sealed Air transaction. That's what it was done for.

3 THE COURT: That, I think, is the problem. I mean,  
4 if one thing is clear in Babcock and Wilcox and some of the  
5 other cases, the estimates of liability done for particular  
6 purposes are not necessarily based on the same evidence or  
7 subject to the same standards as estimates done for other  
8 purposes. Could we get to the purpose for which this one is  
9 done? If you want to ask this witness specifically what he's  
10 done in the past to estimate liabilities, why don't you do it?  
11 Why do we need to get into the documents that are not  
12 themselves the evidence of this witness's testimony anyway and  
13 avoid the problems with respect to the confidential nature of  
14 these potential documents and the issues with respect to the  
15 stipulation? We don't need to be creating all these issues  
16 when you can ask the witness a direct question.

17 MR. FINCH: Your Honor, that's fine, but these  
18 documents are, in my view, 801(d)2 admissions of W.R. Grace as  
19 to a methodology for estimating the cost of future asbestos  
20 claims.

21 THE COURT: For purposes of filing something on,  
22 what, a 10K with respect to the fraudulent conveyance  
23 litigation? For what purpose?

24 MR. FINCH: For purposes of analyzing the total size  
25 of their aggregate asbestos liability as a particular point in

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1 time. It is our view of the case law that the amount that you  
2 have to estimate is what the liability would be if the company  
3 had not gone into bankruptcy. That's the liability that's  
4 channeled to the trust.

5 THE COURT: That wasn't in 1997.

6 MR. FINCH: The liability in 1997, though, the  
7 methodology they followed in 1997, is relevant to the question  
8 of whether the methodology they are asking you to accept now is  
9 reliable or relevant.

10 THE COURT: Ask him what methodology he used for that  
11 purpose.

12 MR. FINCH: Okay.

13 THE COURT: Why do we need to get into issues with  
14 respect to possible breaches of the stipulation and the  
15 confidential nature of documents when you've got the witness on  
16 the stand who apparently did some of the work? Ask him what  
17 methodology he used.

18 BY MR. FINCH:

19 Q Dr. Florence, did you do some of the work with respect to  
20 the 1997 estimate of Grace's liability?

21 A I don't believe I did. No.

22 Q You oversaw the work, correct?

23 A I probably reviewed the report before it went out.

24 Q And that estimate of the liability was based solely on  
25 Grace's experience in the tort system, correct, as you say in

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1 your report here, on Page 1?

2 THE COURT: Which report?

3 MR. FINCH: His report that he is -- for the  
4 estimation. 462.

5 THE COURT: Okay.

6 BY MR. FINCH:

7 A I'm sorry. I'm lost, guys.

8 Q Page -- Exhibit 462. You have that in your notebook.  
9 Page 1.

10 THE COURT: It's Tab No. 2, Dr. Florence.

11 BY MR. FINCH:

12 A I do have 462.

13 Q And ARPC estimated the total pending and future liability  
14 of Grace as of May 1997 and, as before, the estimate was based  
15 solely on Grace's tort system experience? Do you agree with  
16 that?

17 A Correct. The firm did that.

18 Q And in December 2000, ARPC was also asked by Grace to  
19 estimate the number of future asbestos personal injury claims  
20 and -- is that correct?

21 A The last paragraph there?

22 Q Yes.

23 A Correct.

24 Q And based on Grace's claims data as of December 2000, you  
25 estimated there would be approximately 320,000 asbestos

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1 personal injury claims filed against Grace from 2001 to 2039,  
2 correct?

3 A That's correct.

4 Q And, again, as with all of ARPC's pre-petition estimates  
5 on behalf of Grace, the estimate was based solely on Grace's  
6 tort system experience, correct?

7 A Correct.

8 Q And you prepared -- strike that. The Delaware Claims  
9 Facility is an entity that you are familiar with, correct?

10 A Correct.

11 Q For purposes of your first report in this case, you had  
12 the Delaware Claims Facility review a sample of questionnaires,  
13 correct?

14 A Grace contracted with the Delaware Claims Processing  
15 Facility which was, at the time, the Celotex trust.

16 Q Okay. Is it correct that your firm selected the sample of  
17 the closed claims that the Delaware Claims Facility would  
18 review?

19 A That's correct.

20 Q And as part of your back-up materials in this case, you  
21 identified the list of the closed claims that they reviewed,  
22 that you asked them to pull?

23 A I assume we did. I assume that's the list. I mean, I  
24 don't -- I wasn't aware of what was sent in on the --

25 Q You created a sample and then you produced, as part of

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1 your back-up material, the list of the closed claim sample as  
2 well as pictures of all of the files that the Delaware Claims  
3 Facility reviewed, correct?

4 A Okay. I mean, I didn't produce that so I -- someone in my  
5 office did.

6 Q You don't doubt that someone in your office produced that?

7 A No, I don't.

8 Q The review of the questionnaires with respect to the --  
9 first of all, the Celotex trust is an entity that's in the  
10 business of reviewing asbestos claims submitted to trusts,  
11 correct?

12 A Correct.

13 Q And as part of that, they review medical and exposure  
14 information for purposes of claim settlement, correct?

15 A Correct. We're talking about Celotex or the --

16 Q Celotex. Celotex.

17 A Yeah.

18 Q And they have familiarity with reviewing medical and  
19 exposure information for purposes of seeing if they meet the  
20 criteria to be applied, correct?

21 A Well, they have familiarity with reviewing medical records  
22 and legal documents for purposes of collecting that type of  
23 information.

24 Q You don't know one way or another whether Exponent is in  
25 the business of reviewing asbestos exposure and medical

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1 documents for purposes of deciding whether to pay or deny  
2 asbestos personal injury claims?

3 A I don't.

4 Q You never relied on Exponent for purposes of reviewing  
5 asbestos personal injury claims information prior to this case,  
6 correct?

7 A That's correct.

8 (Pause)

9 Q Would you turn to your report in this case, 462 at Page  
10 15? Do you have that, Dr. Florence?

11 A I do.

12 Q This is your counts of the -- or your estimates of the  
13 number of pending claims against Grace as of the petition date,  
14 at the top line?

15 A This is the number of pending claims that had proofs of  
16 claim filed.

17 Q And for lung cancer claims, there were 5510 lung cancer  
18 claims that filed a proof of claim form that you could match  
19 back to the historical database, is that correct?

20 A There are 5510 pending claimants that we could find a POC  
21 for.

22 Q Okay. And of that 5510 using the criteria that you were  
23 asked to apply here, only 59 lung cancer claimants have valid  
24 claims, is that correct?

25 MR. BERNICK: I'm sorry, could I have that question

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1 read back? I -- Nate, can you just restate it?

2 Q Of the 5510 lung cancer claims that were pending on the  
3 bankruptcy petition date that you could find had filed a proof  
4 of claim form, using the criteria that Grace asked you to apply  
5 here, only 59 of them have valid claims?

6 A Fifty-nine of them would meet those criteria.

7 Q Fifty-nine of them would meet that criteria. That's about  
8 one percent?

9 A Yes.

10 Q And with respect to the mesothelioma only about 20 percent  
11 of them, 19 percent of them would be valid, is that right, for  
12 pending mesothelioma?

13 A Something like that, yes. It's 463 of 2426.

14 MR. FINCH: Can I have the ELMO?

15 UNIDENTIFIED SPEAKER: Yes.

16 Q This is a chart that Mr. Bernick showed you, GG2315. Do  
17 you see that chart, Dr. Florence?

18 A I do.

19 Q Now, you've got a box here, not filed as of 4/01. What  
20 does that refer to?

21 A Those were proofs of claim that were filed or were  
22 submitted that did not have a pending claim. They had not been  
23 filed with Grace prior to 4/01.

24 Q They were not filed in the sense you couldn't match them  
25 back to the historical database, correct?

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1 A Well, some we know were not filed in the sense that they  
2 had dates -- filing dates that were subsequent to 4/01.

3 Q What do you mean by filing dates?

4 A There were dates indicated that the case was filed after  
5 4/01.

6 Q Well, nobody could file a case against Grace after 4/01,  
7 correct?

8 A I agree.

9 Q But, they -- are you talking about dates that indicated  
10 they had filed the case against other people after 4/01 or  
11 dates that were --

12 A There were dates that indicate they had filed against  
13 Grace after 4/01.

14 Q So, there were some number of people that -- couldn't that  
15 be an artifact of the database, meaning that people could have  
16 filed a lawsuit against Grace prior to April of 2001 and it  
17 wasn't entered in the database until some months later.

18 A I think we retained a filing date. We also had diagnosis  
19 dates that were subsequent to 4/01. So, it seemed strange that  
20 a case could be diagnosed after the -- and filed before but  
21 diagnosed after the 4/01 date.

22 Q Well, the diagnosis date was a diagnosis date that was in  
23 the questionnaires, correct?

24 A No, there would be -- we would have to have some other  
25 data other than the POC to determine the diagnosis date,

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1 correct.

2 Q And you don't know whether the diagnosis date that the  
3 claimants were using for the questionnaire was just the most  
4 recent diagnosis date or the first diagnosis date, do you?

5 MR. BERNICK: Objection to this line of questioning.  
6 The question is presumably whether the case -- the complaint  
7 was filed as of the date of the Grace filing. What does that  
8 have to do with diagnosis dates or what's filed on the  
9 questionnaire?

10 Q Dr. Florence, how many people filed non-settle proof of  
11 claim forms that indicated that they had a claim against W.R.  
12 Grace that you didn't consider for purposes of your analysis  
13 because they fell into this box, not filed as of 4/01?

14 MR. BERNICK: Objection to the form of the question,  
15 didn't consider.

16 THE COURT: Do you want to clarify didn't consider?

17 Q Didn't include as part of your base of pending claims.

18 A There were a number of claims for which -- we tried to  
19 match the pending cases against the POCs. There were a number  
20 of claims that we could not match a pending case to a POC. Of  
21 those POCs, there were a number of POCs that were cases that  
22 were POCs for settled claims, liquidated claims, claims filed  
23 after the bankruptcy date, and claims we had never seen before  
24 anywhere, so claims that didn't seem to have any relation to  
25 Grace's historic experience.

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1 Q Is it correct that over 100,000 people filed a proof of  
2 claim form for a pending unsettled personal injury claim?

3 MR. BERNICK: Objection to the form of the question.  
4 Pending in what sense?

5 Q Over 100,000 people filed a proof of claim form alleging  
6 that they had a claim against Grace that wasn't settled prior  
7 to petition date, correct?

8 THE COURT: I'm sorry, I thought the evidence was  
9 that there were approximately 84,000 or 87. Are you suggesting  
10 there were more?

11 MR. BERNICK: Yes.

12 THE COURT: Okay, I'm sorry. I apologize.

13 A You're saying how many proofs of claim were filed?

14 Q For asbestos personal injury claims.

15 A It seems to me there were somewhere around 130,000 filed  
16 or something like that.

17 Q Okay. And of that number how many were settled?

18 A I don't remember the exact number but the majority of them  
19 were pending.

20 Q So, over 100,000 proof of claim forms were filed for  
21 pending unsettled --

22 A No, no, no, I said the majority of them were pending. Of  
23 the proof of claim forms that were filed, the majority of them  
24 were pending. The next largest category I believe were settled  
25 or liquidated claims. And then the next largest category as